The Weekly True Democrat.

LEGISLATIVE EDITION. SESSION 1909.

Good Government; Honesty in Public Office; Equal Justice to All--Special Privileges to None.

MESSAGE OF THE GOVERNOR.

Executive Office,
Tallahassee, Fla., April 6, 1909.

Gentlemen of the Legislature:

It is my constitutional duty to "communicate by Message to the Legislature, at each regular session, information concerning the condition of the State, and recommend such measures as may be deemed expedient."

GENERAL CONDITION OF THE STATE.

POPULATION.

"The condition of the State" is satisfactory. The last United States census report shows that the population has increased 35.5 per cent. for the preceding ten years, showing greater increase than in any other States except North Dakota, Oklahoma, Idaho, Washington, Texas and Montana.

ILLITERACY.

The illiterates of the State are less than in any State from Louisiana to Virginia. Comparisons with other States were not made. They are decreasing at a greater rate than probably in any other State.

HEALTH.

The State Census Report shows the death rate in the State to be 6.6 to each 1000. In the registration area of the United States representing the New England States, New York, New Jersey, Delaware and the District of Columbia, it is 17.8.

GENERAL PROGRESS.

We are now producing more than one-half of the phosphate of the United States, and more than one-third of the phosphate of the world. We are producing more than one-half of the naval stores of the United States. We are accomplishing satisfactory and increasing results in agriculture, horticulture, manufacturing, and in fisheries; in mining, in commerce, in hygiene, in education, in banking, in transportation, religion, politics, and climate: In the products of the field, farm, forest and fireside.

DUE PROCESS OF LAW.

Declaration of Rights—English Rule—Errors of Attorneys Visited Upon Clients—Recommendations of Judge Wm. H. Taft, Now President.

The Declaration of Rights declares: "No man shall be deprived of life, liberty, or property, without due process of law." Make "due process of law" to embrace the following: "No judgment shall be reversed, or new trial granted on the ground of misdirection of the jury, or the improper admission of evidence, or for error, in any matter of pleading, practice, or procedure, unless in the opinion of the Appellate Court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice." This rule was adopted by the English court in 1878. It has worked satisfactorily. It has been recommended by the American Bar Association.

These errors, by the attorneys, in civil cases, work hardships on their clients. In criminal cases they work hardships on the individual, or upon the people of the county, or the State at large. The errors made by the attorneys are visited upon the heads of others.

The following, from Mr. Taft, now President, is concurred in: "No judgment of a court below should be reversed except for error, which a court, reading the entire evidence, can affirmatively say would have led to a different verdict. It should be for the defeated party to satisfy the Appellate Court that the error was really prejudicial to him, upon the merits."

DUE PROCESS OF LAW AS PRACTICED IN THE SUPREME COURT OF FLORIDA.

"This Cause" From Polk County, Dismissed on Account of Carelessness of Attorney—Case of Akin v. Morgan Dismissed on Account of "Oversight or Neglect of Counsel"—The Law—Rule of the Court in 1887—*Nunc pro tunc* Amendments Allowed—Rule of Present Court Easy Way to Dispose of Cases—Such Rule Operated as a Kidnapper of Justice—Difficulty of Appealing Cases.

Your attention is invited to the following causes reported to the Southern Reporter, for Feb. 6, 1909: Keen et al. v. State ex rel. Drane et al. (Supreme Court of Florida, Dec. 11, 1908.) *Per curiam.* "This cause brought here by writ of error to the Circuit Court in and for [illegible] County having been reached and taken up for final consideration, in its regular order on the docket, the court finds that no properly certified transcript of the record thereon has ever been filed. The certificate of the Circuit Court Clerk appended to what purports to be a transcript of the record filed here states simply that 'it contains a correct transcript of the judgment, and a true and correct recital of all such papers and proceedings in said cause as appears from the records and files of my office, etc.' *It fails to certify that it contains true and correct copies of such papers.*"

"It has been repeatedly held here that where a cause is reached for final determination in regular order, and it appears that the certificate of the court necessary to give authenticity to the transcript of the record is fatally defective, the writ of error or appeal will be dismissed, and that the defect found in the certificate of the clerk to the transcript in this case is a fatal one." It will be observed that Justice Parkhill dissented.

In Fla. Reports, Vol. 50, June Term, 1905, in the case of Akin et al. v. Morgan et al. may be found the following: "When a cause is submitted to this court on its merits, and the cause remains upon the docket until it is reached by the court in regular order for final decision upon its merits, the parties have had their day in court; and if upon consideration of the case it is dismissed for some fatal defect due to oversight or neglect of counsel, where such defect or oversight was not beyond the control of counsel, the cause will not be reinstated." . . . It will be observed that the client and not the attorney is punished for "neglect of counsel."

"It has been the universal practice of this court to deny applications to reinstate cases that have been dismissed by the court for some fatal defect in the clerk's certificate to the transcript of the record due to oversight or neglect of counsel in matters within their control, when such dismissals were by the court of its own motion in considering the cases when taken up in regular order for final determination on the merits."

The law upon which the court acted in this case may be found in Sec. 1705, of the General Statutes: Filing of Transcript of Record and Proceedings Thereon.—"It shall be the duty of the Plaintiff in error to demand of the Clerk of the Court below, or from the Judge, if it have no Clerk, a true copy of all such proceedings in such cause in the court below, and to file said copy in the Appellate Court on or before the return day of the writ of error. If the plaintiff in error fails to file the proceedings as aforesaid, it shall be the duty of said court, *unless good cause be shown,* to dismiss said writ of error on the adverse party producing a certificate from the Clerk of the Court below," etc. "Good cause" would show that justice would be thwarted on account of the carelessness of the attorney. This law was passed in 1832. The Supreme Court of Florida, in 1887, acting under the same law, allowed an amendment *nunc pro tunc.* There were then only three members of the Court. There are now six. Georgia has six Justices of the Supreme Court. South Carolina, four; North Carolina, five; Virginia, five. These States have far greater population and wealth than we have. There appears to be no reason why our Supreme Court has not the time in which to try cases promptly on their merits. The rule as now applied operates as a kidnapper of justice.

In the Florida Reports, Vol. 23, January Term, 1887, S. J. Temple v. Florida Land and Immigration Co., may be found the following:

"The motion to strike the Bill of Exceptions from the Record will be granted, but if the evidence furnished by the transcript of an order having been made is, as we are bound to assume, correct, there is no doubt that the Minutes may be amended by an entry in them, *nunc pro tunc* of such order, and we will postpone the hearing of this cause for a reasonable time to permit appellant to have such amendment made, and to move to reinstate the Bill of Exceptions in the Record." In which rule is there more of justice, the rule of 1887, allowing amendments, or the rule of the present day, in which amendments are prohibited?

The rule of the present court, of course, is an easy way to dispose of cases. It is recommended that said Section 1705 be so amended that the attorney be punished for carelessness, and not the client. The failure to permit an amendment punishes the client.

Many attorneys complain of the difficulty in appealing cases to the Supreme Court. Under present rules, cases will often be thrown out, without a hearing, the client suffering and not the attorney who makes the error. Make the rules easier for application. It is recommended that acts be passed, whereby the final decisions may be obtained based on justice, rather than upon the carelessness and ignorance of attorneys, known also as officers of the court.

PURE FOOD INSPECTORS.

Inspectors of Pure Food to Inspect Feed Stuffs and Fertilizers and Vice Versa—Sheriffs and Constables to Draw Samples and Send Them to State Chemist.

Oftentimes Inspectors of Pure Food and Drugs, especially in small towns, could well inspect, without extra expense, feed stuffs and fertilizers. In a similar manner, the Inspectors of Feed Stuffs and Fertilizers could inspect in the same town drugs and pure food. Both of these laws, authorizing the appointment of such inspectors, should be amended, so that these two inspectors may each inspect pure food and drugs, and feed stuffs and fertilizer. This does not increase the number of inspectors.

The Pure Food Law should be amended so that the Sheriff, his Deputy, or any Constable, should have authority to draw samples and send such samples, at the expense of the State, to the State Chemist This would be especially beneficial in determining promptly the difference between "soft drinks" and intoxicating drinks.

RAILROAD COMMISSION.

Appropriation for Investigating Books of Common Carriers—Separate Coaches for Races—Joint Rates for Railroads and Water Carriers—Commission's Penalties to be Liens—Commission's Powers Should be More Specific.

The necessity and importance of appropriations to be expended investigating the books and papers of the railroads, common carriers and express companies is shown at length in the Report of the Railroad Commission.

The following recommendations of the Railroad Commission are concurred in: "A valid law requiring separate passenger coaches for white and negro passengers." "A law empowering the Commissioners to prescribe joint rates for railroads and water carriers." "A law making penalties imposed by the Commissioners liens on the property of the carrier, until they are paid, or until they are determined in favor of the carrier." The object of this is that, in case a railroad should go into the hands of a receiver, the penalties may be preserved. "A law making the powers of the Commission in some instances more specific," thereby saving law suits.

TELEGRAPH COMPANIES UNDER RAILROAD COMMISSION.

There is no good reason why telegraph companies should not be placed under the operation of the Railroad Commission.

PRIMARY ELECTIONS.

Too Expensive—Publicity Clause—Expense in South Carolina.

The primaries are too expensive. The law should be amended so as to provide a publicity clause. It should require at least every candidate and some specified workers to certify to the public, under suitable penalties, at some time prior to said election, a statement of the amount of money expended, and from what source the money was received.

I happened to be in South Carolina in 1908, at the time of the primaries. It was a surprise to see that the amount of money expended by the successful candidate for Governor was less than $400.

STATE CONVICTS.

Revenue From—Protection for Convicts—Women and Infirm Convicts May be Withdrawn—Lessees to Pay 15% Additional for Remaining Prisoners—Prison Farm for Women and Infirm Convicts as Nucleus for the State Penitentiary—Low Death Rate in Florida Convict Camps—Objections to Use of State Convicts on Road Work—Money from Convict Lease Could be Used on Roads.

The State convicts, on March 2nd, 1909, were leased to the Florida Pine Company, for a period of four years, commencing January 1st, 1910, at $281.60 apiece. This is practically free of all expense to the State. This will pay annually to the State approximately $316,000.00. Deducting incidental expenses, for inspectors and appropriations for State Reform School, aggregating $20,000, there is left about $296,000, or $1,184,000, for the four years' lease. The terms and conditions of the lease are such